

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

|                                  |   |                  |
|----------------------------------|---|------------------|
| OKLAHOMA WATER RESOURCES         | ) |                  |
| BOARD,                           | ) |                  |
|                                  | ) |                  |
| Plaintiffs,                      | ) |                  |
|                                  | ) |                  |
| vs.                              | ) | No. CIV-12-275-G |
|                                  | ) |                  |
| UNITED STATES OF AMERICA et al., | ) |                  |
|                                  | ) |                  |
| Defendants.                      | ) |                  |

**JOINT STATUS REPORT**

By Order dated June 25, 2020, the Court directed the undersigned parties to file a joint report on the status of the above-captioned action and (a) to advise therein regarding satisfaction of the conditions precedent, (b) to suggest a date by which all appropriate dispositive motions in conformance with the parties' settlement agreement are to be filed, and (c) to advise what further judicial action, if any, is necessary. To comply with the Order, the Oklahoma Water Resources Board ("OWRB"), the City of Oklahoma City and the Oklahoma City Water Utilities Trust (collectively "Oklahoma City" or "City"), and the United States (collectively "the parties") report to the Court as follows.

1. This case has been stayed since August 10, 2016 based on a report from the parties that a settlement agreement had been reached which resolved all issues. The parties advised the Court that a joint motion to dismiss this action would be filed based on the settlement agreement at the appropriate time in conformance with the settlement agreement.

2. The settlement agreement was approved and ratified by the United States Congress on December 16, 2016 and subsequently enacted into federal law in Pub. Law 114-322, § 3608, 130 Stat. 1628, 1810 (“Congressional Act” or “Act”).

**Satisfaction of the Conditions Precedent**

3. The settlement agreement and the Act contain conditions precedent necessary for the full enforceability of the settlement agreement. *Id.* at § 3608(i). Specifically, the settlement agreement “shall take effect and be enforceable on the date on which the Secretary of the Interior (“Secretary”) publishes in the Federal Register a certification that the following tasks are complete. *Id.* There are a total of nine conditions precedent outlined in the table below with a corresponding status report.

| Condition Precedent   | Status Report  |
|---|--|
| Conform the settlement agreement to the Congressional Act to the extent that the settlement agreement conflicted. § 3608(i)(1)(A) | The settlement parties have agreed on a draft conformed agreement that will now be executed by the parties. The conformed settlement agreement, together with all exhibits and related memoranda, are proceeding through the federal approval and execution process with expected completion in August 2020. |
| The conformed settlement agreement is executed by the Secretary, the Nations, the   | Each of the settlement parties is in the process of securing execution of the conformed settlement agreement. The  |

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|---|---|
| <p>Governor of the State of Oklahoma, the OWRB, the City, and the Trust.</p> <p>§ 3608(i)(1)(B)</p>   | <p>United States expects the Secretary to execute the settlement agreement in August 2020 following execution by the other parties. The other settlement parties expect their respective execution processes to be complete in July or August 2020.</p> |
| <p>Conform the amended storage contract to the Congressional Act to the extent that the contract conflicted. § 3608(i)(1)(C)</p>  | <p>Complete</p>   |
| <p>The amended storage contract is executed by the State, the City, and the Trust, as well as approved by the Secretary of the Army.</p> <p>§ 3608(i)(1)(D)</p>   | <p>Complete</p>   |
| <p>An order is entered in <i>United States v. Oklahoma Water Resources Board</i>, Civ. 98-C-521-E, with any modifications to the order dated Sept. 11, 2009. § 3608(i)(1)(E)</p>                          | <p>Complete</p>   |
| <p>Orders of dismissal are entered in <i>Chickasaw Nation, Choctaw Nation v. Fallin et al.</i>, Civ 11-297 (W.D.Ok.) and <i>OWRB v. United States, et al.</i>, Civ. 12-275 (W.D.Ok.). § 3608(i)(1)(F)</p> | <p>See paragraph 4 below.</p>   |

|   |   |
|---|---|
| <p>OWRB issues the City Permit.</p> <p>§ 3608(i)(1)(G)</p>  | <p>On June 1, 2020 the Pushmataha County District Court issued an Order denying the appeal of the OWRB's decision to issue the City Permit. The Order was appealed to the Oklahoma Supreme Court on July 2, 2020. A briefing schedule for the appeal has not yet been issued.</p> |
| <p>Final documentation of the Kiamichi Basin hydrologic model is on file at the Oklahoma City offices of the OWRB.</p> <p>§ 3608(i)(1)(H)</p> | <p>Complete</p>   |
| <p>The Atoka and Sardis Conservation Projects Fund has been funded as provided in the settlement agreement.</p> <p>§ 3608(i)(1)(I)</p>        | <p>Complete</p>   |

**Date by Which All Dispositive Motions in Conformance with the Settlement Agreement are Anticipated to Be Filed**

4. As explained in the table above, a number of conditions precedent are still pending though working through various processes. Once all other conditions precedent are satisfied, the parties will file a joint motion to dismiss in this matter simultaneous with a joint motion to dismiss in Case No. CIV 11-927-G. The motions to dismiss may be filed by September

30, 2020, but the parties will inform the Court in advance if an extension of the September 30, 2020 date will be required.

5. The parties will continue to work diligently to complete the conditions precedent in a timeframe that allows the Secretary to publish findings on the satisfaction of the enforceability conditions in the Federal Register on or before September 30, 2020, the Expiration Date as provided in the legislation or agree on any necessary extensions to that date. *Id.* at § 3608(i)(2).

#### **Whether Any Further Judicial Action is Necessary**

6. The parties request the Court continue the stay in this matter through September 15, 2020. On or before that date the parties will provide the next joint status report to the Court wherein the parties will update the Court on the conditions precedent and the other matters addressed herein.

Respectfully submitted,

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and Oklahoma City Water Utilities Trust***

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of April, 2020, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the ECF registrants.



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Vanessa Boyd Willard